



DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the Defense Production Act of 1950

AGENCY: Antitrust Division, U.S. Department of Justice.

ACTION: Notice of review of voluntary agreement.

SUMMARY: Notice is hereby given pursuant to section 708 of the Defense Production Act of 1950 (“DPA”), that the Attorney General finds, with respect to the Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic (“Voluntary Agreement”) proposed by the Federal Emergency Management Agency (“FEMA”), that the purposes of section 708(c)(1) of the DPA may not reasonably be achieved through a voluntary agreement having less anticompetitive effects or without any voluntary agreement. Given this finding, the proposed Voluntary Agreement may become effective following the publication of this notice. FEMA is publishing the text of the proposed Voluntary Agreement elsewhere in this issue of the *Federal Register*.

SUPPLEMENTARY INFORMATION: Under the DPA, FEMA may enter into agreements with representatives of private industry for the purpose of improving the efficiency with which private firms contribute to the national defense when conditions exist that may pose a direct threat to the national defense or its preparedness. Such arrangements are generally known as “voluntary agreements.” A defense to actions brought under the antitrust laws is available to each participant acting within the scope of a voluntary agreement that has come into force under the DPA.

The DPA requires that each proposed voluntary agreement be reviewed by the Attorney General prior to becoming effective. If, after consulting with the Chairman of the Federal Trade Commission, the Attorney General finds that the purposes of the DPA's voluntary-agreements provision "may not reasonably be achieved through a voluntary agreement . . . having less anticompetitive effects or without any voluntary agreement," the agreement may become effective. 50 U.S.C. 4558(f)(1)(B).

The purpose of the proposed Voluntary Agreement is to support Department of Homeland Security, Department of Health and Human Services ("HHS"), and FEMA contingency requirements to provide medical resources during times of pandemic through procedures agreed upon in advance. The proposed Voluntary Agreement establishes the terms, conditions and procedures under which participants agree voluntarily to contribute and facilitate medical resources production and distribution capacity as requested by FEMA, HHS, and other Federal Government entities. FEMA has certified that the proposed Voluntary Agreement is necessary to provide for the national defense in the event of a pandemic.

FEMA requested that the Attorney General issue a finding that the proposed Voluntary Agreement satisfies the statutory criteria set forth in 50 U.S.C. 4558(f)(1)(B). The Antitrust Division reviewed the proposed agreement, attended an open meeting of interested persons pursuant to the requirements of 44 CFR 332.2, and consulted with the Chairman of the Federal Trade Commission as to the competitive effect of the proposed agreement. On July 31, 2020, by letter to Peter Gaynor, FEMA Administrator, William P. Barr, Attorney General, issued a finding, pursuant to 50 U.S.C. 4558(f)(1)(B), that the purposes of the DPA's voluntary-agreements provision "may not reasonably be achieved

through a voluntary agreement . . . having less anticompetitive effects or without any voluntary agreement.”

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